§ 740.7 Computers (APP).

(a) *Scope*—(1) *Commodities.* License Exception APP authorizes exports and reexports of computers, including ''electronic assemblies'' and specially designed components therefor controlled by ECCN 4A003, *except* ECCN 4A003.e (equipment performing analog-to-digital conversions exceeding the limits in ECCN 3A001.a.5.a), exported or reexported separately or as part of a system for consumption in Computer Tier countries as provided by this section. When evaluating your computer to determine License Exception APP eligibility, use the APP parameter to the exclusion of other technical parameters in ECCN 4A003.

(2) *Technology and software.* License Exception APP authorizes exports of technology and software controlled by ECCNs 4D001 and 4E001 specially designed or modified for the ''development'', ''production'', or ''use'' of computers, including ''electronic assemblies'' and specially designed components therefor classified in ECCN 4A003, *except* ECCN 4A003.e (equipment performing analog-to-digital conversions exceeding the limits in ECCN 3A001.a.5.a), to Computer Tier countries as provided by this section.

(b) *Restrictions.* (1) Related equipment controlled under ECCN 4A003.g may not be exported or reexported under this License Exception when exported or reexported separately from eligible computers authorized under this License Exception.

(2) *Access and release restrictions.* (i) [Reserved]

(ii) *Technology and source code.* Technology and source code eligible for License Exception APP may not be released to nationals of Cuba, Iran, North Korea, Sudan, or Syria.

(3) Computers and software eligible for License Exception APP may not be reexported or transferred (in country) without prior authorization from BIS, *i.e.*, a license, a permissive reexport, another License Exception, or ''No License Required''. This restriction must be conveyed to the consignee, via the Destination Control Statement, see § 758.6 of the EAR. Additionally, the end-use and end-user restrictions in paragraph (b)(5) of this section must be conveyed to any consignee in Computer Tier 3.

(4) You may not use this License Exception to export or reexport items that you know will be used to enhance the APP beyond the eligibility limit allowed to your country of destination.

(5) License Exception APP does not authorize exports, reexports and transfers (in-country) for nuclear, chemical, biological, or missile end-users and end-uses subject to license requirements under § 744.2, § 744.3, § 744.4, and § 744.5 of the EAR. Such exports, reexports and transfers (in-country) will continue to require a license and will be considered on a case-by-case basis. Reexports and transfers (in-country) to these end-users and end-uses in eligible countries are strictly prohibited without prior authorization.

(6) Foreign nationals in an expired visa status are not eligible to receive deemed exports of technology or source code under this License Exception. It is the responsibility of the exporter to ensure that, in the case of deemed exports, the foreign national maintains a valid U.S. visa, if required to hold a visa from the United States.

(c) *Computer Tier 1 destinations*—(1) *Eligible destinations.* The destinations that are eligible to receive exports and reexports under paragraph (c) of this section include: Albania, Antigua and Barbuda, Argentina, Aruba, Australia, Austria, Bahamas (The), Bangladesh, Barbados, Belgium, Belize, Benin, Bhutan, Bolivia, Botswana, Brazil, Brunei, Bulgaria, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Chile, Colombia, Congo (Democratic Republic of the), Congo (Republic of the), Costa Rica, Cote d'Ivoire, Croatia, Curaçao, Cyprus, Czech Republic, Denmark, Dominica, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, Fiji, Finland, France, Gabon, Gambia (The), Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hong Kong, Hungary, Iceland, Indonesia, Ireland, Italy, Jamaica, Japan, Kenya, Kiribati, Korea (Republic of), Latvia, Lesotho, Liberia, Lithuania, Luxembourg, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Marshall Islands, Mauritius,

Mexico, Micronesia (Federated States of), Monaco, Mozambique, Namibia, Nauru, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Rwanda, St. Kitts & Nevis, St. Lucia, St. Vincent and the Grenadines, Sao Tome & Principe, Samoa, San Marino, Senegal, Seychelles, Sierra Leone, Singapore, Sint Maarten (the Dutch two-fifths of the island of Saint Martin), Slovakia, Slovenia, Solomon Islands, Somalia, South Africa, Spain, Sri Lanka, Surinam, Swaziland, Sweden, Switzerland, Taiwan, Tanzania, Togo, Tonga, Thailand, Timor–Leste, Trinidad and Tobago, Turkey, Tuvalu, Uganda, United Kingdom, Uruguay, Vatican City, Venezuela, Western Sahara, Zambia, and Zimbabwe.

(2) *Eligible commodities.* All computers, including electronic assemblies and specially designed components therefore are eligible for export or reexport under License Exception APP to Tier 1 destinations, subject to the restrictions in paragraph (b) of this section.

(3) *Eligible technology and software.* (i) Technology and software described in paragraph (a)(2) of this section for computers of unlimited APP are eligible for export or reexport under License Exception APP to: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, or the United Kingdom; and

(ii) "Development" and "production" technology and source code described in paragraph (a)(2) of this section for computers with an APP less than or equal to 25 Weighted TeraFLOPS (WT) are eligible for deemed exports under License Exception APP to foreign nationals of Tier 1 destinations, other than the destinations that are listed in paragraph (c)(3)(i) of this section, subject to the restrictions in paragraph (b) of this section.

(iii) "Use" technology and source code described in paragraph (a)(2) of this section for computers with an APP less than or equal to 120 WT are eligible for deemed exports under License

Exception APP to foreign nationals of Tier 1 destinations, other than the destinations that are listed in paragraph (c)(3)(i) of this section, subject to the restrictions in paragraph (b) of this section.

(d) *Computer Tier 3 destinations*—(1) *Eligible destinations.* Eligible destinations under paragraph (d) of this section are: Afghanistan, Algeria, Andorra, Angola, Armenia, Azerbaijan, Bahrain, Belarus, Bosnia & Herzegovina, Burma, Cambodia, China (People's Republic of), Comoros, Djibouti, Egypt, Georgia, India, Iraq, Israel, Jordan, Kazakhstan, Kosovo, Kuwait, Kyrgyzstan, Laos, Lebanon, Libya, Macau, Macedonia (The Former Yugoslav Republic of), Mauritania, Moldova, Mongolia, Montenegro, Morocco, Oman, Pakistan, Qatar, Russia, Saudi Arabia, Serbia, Tajikistan, Tunisia, Turkmenistan, Ukraine, United Arab Emirates, Uzbekistan, Vanuatu, Vietnam, and Yemen.

(2) *Eligible commodities.* None.

(3) *Eligible technology and source code.* (i) "Development," and "production" technology and source code described in paragraph (a)(2) of this section for computers with an APP less than or equal to 12 Weighted TeraFLOPs (WT) are eligible for deemed exports under License Exception APP to foreign nationals of Tier 3 destinations as described in paragraph (d)(1) of this section, subject to the restrictions in paragraph (b) and the provisions of paragraph (d)(4) of this section.

(ii) "Use" technology and source code described in paragraph (a)(2) of this section for computers with an APP less than or equal to 25 WT are eligible for deemed exports under License Exception APP to foreign nationals of Tier 3 destinations as described in paragraph (d)(1) of this section, subject to the restrictions in paragraph (b) and the provisions of paragraph (d)(4) of this section.

(4) *Foreign National Review (FNR) requirement for deemed exports*—(i) *Submission requirement.* Prior to disclosing eligible technology or source code to a foreign national of a Computer Tier 3 country that is not also a country listed in Country Group B in Supplement No. 1 to part 740 of the EAR under this License Exception, you must submit a

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Foreign National Review (FNR) request to BIS, as required under § 748.8(s) of the EAR. Your FNR request must include information about the foreign national required under § 748.8(t) of the EAR and set forth in Supplement No. 2 of part 748 of the EAR.

(ii) *Confirmation of eligibility.* You may not use License Exception APP, until you have obtained confirmation of eligibility via either BIS's System for Tracking Export License Applications (STELA) (*https://snapr.bis.doc.gov/ stela*) from BIS's Simplified Network Application Procedure (SNAP). See *http://www.bis.doc.gov/SNAP/index.htm* for more information about SNAP.

(iii) *Action by BIS.* Within nine business days of the registration of the FNR request, BIS will electronically refer the FNR request for interagency review, or if necessary return the FNR request without action (*e.g.*, if the information provided is incomplete). Processing time starts at the point at which the notification is registered into BIS's electronic system.

(iv) *Review by other departments or agencies.* The Departments of Defense, State, Energy, and other agencies, as appropriate, may review the FNR request. Within 30 calendar days of receipt of the BIS referral, the reviewing agency will provide BIS with a recommendation either to approve or deny the FNR request. A reviewing agency that fails to provide a recommendation within 30 days shall be deemed to have no objection to the final decision of BIS.

(v) *Action on the FNR Request.* After the interagency review period, BIS will promptly notify the applicant regarding the FNR request, *i.e.*, whether the FNR request is approved, denied, or more time is needed to consider the request.

(e) *Reporting requirements.* See § 743.1 of the EAR for reporting requirements of certain items under License Exception APP.

[71 FR 20883, Apr. 24, 2006, as amended at 71 FR 51717, Aug. 31, 2006; 71 FR 68439, Nov. 27, 2006; 72 FR 13441, Mar. 22, 2007; 72 FR 60249, Oct. 24, 2007; 73 FR 51218, Sept. 2, 2008; 73 FR 68324, Nov. 18, 2008; 75 FR 31680, June 4, 2010; 75 FR 36514, June 28, 2010; 76 FR 36988, June 24, 2011; 76 FR 54930, Sept. 6, 2011; 76 FR 70339, Nov. 14, 2011; 77 FR 39367, July 2, 2012]

§ 740.8 [Reserved]

§ 740.9 Temporary imports, exports, reexports, and transfers (in-country) (TMP).

This License Exception authorizes various temporary exports and reexports; exports and reexports of items temporarily in the United States; and exports and reexports of beta test software.

(a) *Temporary exports, reexports, and transfers (in-country).* License Exception TMP authorizes exports, reexports, and transfers (in-country) of items for temporary use abroad (including use in or above international waters) subject to the conditions specified in this paragraph (a). No item may be exported, reexported, or transferred (in-country) under this paragraph (a) if an order to acquire the item, such as a purchase order, has been received before shipment; with prior knowledge that the item will stay abroad beyond the terms of this License Exception; or when the item is for subsequent lease or rental abroad. The references to various countries and country groups in these TMP-specific provisions do not limit or amend the prohibitions in § 740.2 of the EAR on the use of license exceptions generally, such as for exports of ''600 series'' items to destinations in Country Group D:5.

(1) *Tools of trade.* Exports, reexports, or transfers (in-country) of commodities and software as tools of trade for use by the exporter or employees of the exporter may be made only to destinations other than Country Group E:1; for Sudan, see paragraph (a)(2) of this section. The tools of trade must remain under the ''effective control'' of the exporter or the exporter's employee. Eligible items are usual and reasonable kinds and quantities of tools of trade for use in a lawful enterprise or undertaking of the exporter. Tools of trade include, but are not limited to, commodities and software as is necessary to commission or service items, provided that the commodity or software is appropriate for this purpose and that all items to be commissioned or serviced are of foreign origin, or if subject to the EAR, have been lawfully exported, reexported, or transferred.